U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 07 2005
EAC 03 250 52892

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is an environmental hydrogeologist. At the time of filing he was employed as a junior scientific associate at Systems Engineering and Security, Inc., Greenbelt, Maryland, and he was also studying for his doctorate at the George Washington University. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits copies of previously submitted materials and arguments from counsel.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. [redacted] November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the

> [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel describes the petitioner's work:

> As an Environmental Hydro Geologist, [the petitioner] will be in a position to use his expertise to conduct and lead front-end site investigations to assess existing water and wastewater management land sites, land disposal areas surface impoundments, underground tanks, and other hazardous-waste management facilities. His skills to obtain and interpret subsurface data to identify what contaminants may have been released and how they were distributed to subsurface media will be of great help in analyzing the relevant environmental and hydrogeologic data. . . .
>
> [The petitioner's] outstanding research in the area of Shear Wave Analysis correlating sedimentary (soil) properties with acoustic behavior of media enabling 4D seismic prediction and analysis, is an innovative technological advantage for characterizing the earth system to locate water resources and oil and gas deposits. Further, his strong understanding of the soil engineering properties, geochemistry of inorganic compounds and how chemical speciation affects biological availability and its potential for environmental migration will help in developing risk-based remediation goals for successful water supply and management ensuring safe water supply to benefit the public. . . .
>
> [The petitioner's] expertise and abilities are well reflected in his current association with the National Oceanic and Atmospheric Administration's CoRIS (Coral Reef Information System) project and metadata management. . . . CoRIS is the official system for managing access to NOAA's metadata and coral reef data information. . . . [The petitioner's] valuable contribution to CoRIS to meet the demand for selective, specialized data bases to preserve and protect our marine and coastal zone has been commented and appreciated in the reference letters [submitted with the petition].

Most of the witness letters are from officials and researchers at NOAA, the agency that has sponsored the petitioner's work at Systems Engineering and Security. The most detailed letter from a NOAA official is from [redacted] director of the U.S. Global Water Cycle Program Office. He states:

> [The petitioner's] expertise in hydrology is a valuable asset to US water cycle research because it could help US government agencies make fundamental contributions to science that are likely to provide a high return on investment in terms of an ability to deal with a large number of issues related to water resources and climate in future. . . .
>
> [The petitioner's] advanced technical expertise and academic training in modern instrumentation and computational capabilities would enable him to address these problems and to provide promising scientific approaches for water management like predictive modeling, that could lead to significant progress in estimating global water and energy fluxes, and applying the techniques to hydrology and biogeochemistry to yield quantitative data for variables that previously have been available. These data could lead to significant progress in validating physical models and analyzing how calibration can improve the performance of models used in water resources management and conservation in the USA.
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> [The petitioner] is currently working with . . . CoRIS, which is the official NOAA system for managing access to its coral reef data and information providing technical and research support. . . .
>
> [The petitioner's] capabilities could contribute to the development and application of new chemical tracing methods and new statistical and numerical methods, to help in clearly describing the spatial and temporal regimes within which the hydrologic variables can be accurately predicted to forecast floods and droughts. These developments could give a clear understanding of processes that control water cycle variability, and modeling approaches that could reproduce observed water cycle variability at scales relevant to water resource management.

[redacted] discusses several areas in which the petitioner's work "could" or "would" have a potential impact, but he offers little discussion to the petitioner's professional achievements (as opposed to the petitioner's training). Several other witnesses from NOAA and elsewhere state, in shorter letters, that the petitioner's skills and training are valuable and beneficial to NOAA's mission, but these witnesses provide little information about what the petitioner has done for the CoRIS project. Like [redacted] these witnesses focus on the useful nature of the petitioner's skills and the general goals that the petitioner may eventually achieve through those skills.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work, but finding that the petitioner has not shown that his work to date has had "significant impact" on his field. The director also found that the witness letters submitted with the petition lack "specific information" to show that the contributions of this particular alien serve the national interest to an extent beyond the benefit inherent in the field of endeavor.

On appeal, counsel argues that the petitioner has submitted "letters of recommendations/testimonials from authorities in the relevant fields," attesting to "the Petitioner's unique expertise in environmental hydrogeology and earth sciences. . . . Not only [do] these letters acknowledge the Petitioner's expertise, these letters also show that significance of the prospective national benefit from the Petitioner." Counsel discusses

excerpts from one of these letters, from [redacted], director of the Environment and Social Sustainability Initiative at the George Washington University (where the petitioner was a student at the time of filing):

> [redacted] states that the "outstanding research and strategic natural resources management experience" the Petitioner has gained ["]would be extremely useful in capturing, analyzing and sharing spatial data and information in new and exciting ways to establish optimum sustainable management policies.["] According to [redacted] the Petitioner's "excellent academic record and highly valuable skills would enable him to positively contribute to the improvement of the U.S. environmental and natural resources management and his superior expertise would be of paramount importance to the U.S. Government agencies that are entrusted with the preservation and conservation of U.S. environmental and natural resources."

[redacted] letter, like the other letters, is devoid of information to show how the petitioner's past work has had a significant impact within the field; instead, [redacted] and other witnesses discuss how the petitioner "would" or "could" benefit the United States in the future. The letters do little more than demonstrate that the petitioner is a highly competent hydrogeologist, working on a project that requires the services of a hydrogeologist. Explaining the duties of a hydrogeologist is not a coherent argument as to why it is in the national interest to ensure that he, in particular, is the hydrogeologist for the CoRIS project.

Counsel states "a proper evaluation of the documents submitted with the Petition would have proven that the Petitioner's expertise in several critical areas such as Shear Wave Predication [sic] and Acoustic Study correlating sedimentary properties of earth using seismic waves is unique and first of its kind in the world." Counsel does not identify the "documents" in question; few witnesses even specifically mention the petitioner's work in the above areas. The discovery of new information is a fundamental element of scientific research. If the petitioner's work was entirely lacking in originality, it is unlikely that his master's thesis would have been accepted. The record does not show that the petitioner's "unique," "first of its kind" work has exerted detectable influence, beyond his collaborators, professors, and employers.

The evidence of record portrays the petitioner as a talented researcher at a very early stage of a promising career. Predictions about the petitioner's potential impact on the field are not matched by evidence of past achievements that would justify the scope of those predictions. At best, the waiver request is premature.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

[redacted]

[redacted] this is another matter that CSC handled very poorly. The appeal and brief were in the record as of 1990, and yet the case wasn't sent here until 2004. I don't think the file was lost; I think her family's files were set aside because those that were approved were being considered for rescission.

This is the case we discussed briefly, where the L-2 daughter was denied legalization because she made "legal" entries while her L-1 and L-2 parents were legalized. If the L-1 was eligible for legalization due to having been unlawful, all of the L-2s should have been also.

Because this daughter's file showed that the parents were being considered for rescission, I obtained the L-1 father's file (attached). CIS shows he was granted LPR status though approval of his I-698, but there is no Form I-181 Creation of Record of Permanent Residence in his file. It looks like CSC felt there was no clear basis to rescind. (The premise for possible rescission was he had entered as an L-1, and was therefore "lawful." However, it would have been possible to haven entered as an L-1 while returning to an unlawful residence, and still qualify for legalization.) Anyway, no rescission took place within the 5 years allowed.

There is no indication in CIS that the L-2 appellant before us has another file, much less adjusted in another file. No indication of another file for the L-1 father also. It seems that, to be consistent, we must rule that the L-2 was in unlawful status because INS already ruled that the L-1 was in unlawful status.

DMK

[redacted]